

COPY

**RESTRICTIVE COVENANT AND
DEED RESTRICTION**

This Restrictive Covenant and Deed Restriction ("Covenant") is made and entered into as of the 9th day of April, 2008 by the Boulder Valley School District RE-2, formerly School District Number 3, a public school district and political subdivision of the State of Colorado (the "School District"), 6500 East Arapahoe, P.O. Box 9011, Boulder, Colorado 80301, and is for the benefit of and enforceable by the City of Boulder ("City").

RECITALS

A. The School District is the owner of the real property described on Exhibit A attached hereto and incorporated herein by reference, which is commonly known as Washington Elementary School, located at 1215 Cedar, Boulder, Colorado. For purposes of this Covenant, the real property described on Exhibit A and all appurtenances, improvements and fixtures associated therewith shall hereinafter collectively be referred to as the "Property."

B. The Property is to be sold by the School District pursuant to the terms of the Memorandum of Understanding dated March 8, 2005, as amended, entered into by the School District and the City of Boulder (the "MOU") to a purchaser (the "Purchaser").

C. The City and the School District amended the MOU on March 20, 2006 by way of the Amendment No. 1 to Memorandum of Understanding (the "MOU Amendment").

D. The MOU Amendment authorizes the City to place a covenant on the Property for a period of up to 20 years after the Purchaser's proposal is completed to ensure that the Property will be used as was contemplated in the proposals submitted by Purchaser and that any changes to the use of the land that is not consistent with such proposal shall be subject to the prior approval by the City Council.

E. The MOU Amendment anticipated that the Covenant would be created, in consultation with the selected Purchaser and delivered to the School District prior to the closing. This MOU Amendment was included in the City's request for proposal ("RFP") in order to provide the respondents with notice of the terms of the Covenant which will encumber the Property.

F. The City desires to subject the Property to this Covenant in order to ensure that the Purchaser completes those items that lead it to being selected in the RFP process described in the MOU Amendment.

G. This Covenant is to be binding upon any subsequent buyer, devisee, transferee, grantee, owner or holder of title of the Property, or any portion thereof, and for purposes of this Covenant, the word "Owner" shall mean and include any entity or person who acquires an ownership interest in the Property, or any portion thereof, after the recording of this Covenant in the real estate records of the County of Boulder, State of Colorado.

H. This Covenant is intended to be for the benefit of and to be enforced by the City.

COVENANT

NOW THEREFORE, the School District as the owner of the Property, for itself, its successors, assigns and all subsequent grantees and transferees, declares, creates and imposes the following land use covenants, restrictions and limitations on the Property, or any portion thereof, and declares that the Property shall, from and after the date of the recording of this Covenant with the Clerk and Recorder of the County of Boulder, hereinafter be subject to the terms and conditions of this Covenant. This Covenant shall run with the land and the Property, shall be binding upon the Property and shall be binding upon any subsequent owner of the Property, or any portion thereof, and their heirs, successors and assigns, and shall be for the benefit of the City. Acceptance of a deed or other instrument of conveyance of the Property, or any portion thereof, shall constitute acceptance and approval of this Covenant and agreement to be bound by this Covenant without the necessity of expressly providing for such effect with respect to any particular provision herein.

1. Restrictions.

- a. Affordable Housing. The owner of the Property agrees to create the greater of 20% of the total units or eight units that are permanently affordable to low income households and the greater of 27% of the total units or 11 units that are permanently affordable to middle income households. Covenants or deed restrictions to secure the permanent affordability of dwelling units shall be signed and recorded with the Boulder County Clerk and Recorder prior to application for any residential building permits on the Property. The following conditions shall apply to the Subject Property:
 - i. Low Income Permanently Affordable. Twenty percent or eight of the dwelling units on the Residential Parcel shall have deed restrictions or covenants, in a form acceptable to the City Manager, as to the maximum price. The dwelling units shall be permanently affordable to low and moderate income households consistent with the provisions of Chapter 9-13, B.R.C. 1981, "Inclusionary Zoning."
 - ii. Middle Income Permanently Affordable. Twenty-seven percent or 11 of the deed restricted dwelling units shall be permanently affordable to middle income households which are defined as those households earning less than 120% of the Area Median Income as defined by HUD for the City of Boulder and shall have sale prices and resale terms acceptable to and approved by the City Manager. If acceptable prices and terms cannot be agreed that will enable the sale of the Middle Income Units, some or all of the Middle Income Units may be converted to units permanently affordable to lower incomes or market rate units. Any additional market rate units created as a result of this paragraph will be subject to the entitlement premium described in the MOU Amendment.

- iii. Covenants Required. Prior to the issuance of any residential building permits for the parcel, the Applicant shall execute, in a form acceptable to the City Attorney and the City Manager, covenants and deed restrictions that guarantee the perpetual affordability of each of the permanently affordable units which shall include without limitation the initial maximum allowable sale price, the rate by which subsequent sale prices may increase, the income and asset limitations of the purchasers of each permanently affordable unit, and fair marketing and selection procedures.
- b. Barrier Free Design. The owner of the Property agrees to construct or otherwise provide a minimum of twenty four (24) Type B accessible dwelling units designed and constructed for accessibility in accordance with ICC/ANSI A117.1-1998 "Accessible and Usable Buildings and Facilities." Such units shall be accessible on the floor level that includes common areas such as the living room, dining room and kitchen and shall have at least one bedroom and bathroom on that floor level.
- c. Tree Preservation. The owner of the Property agrees to protect and maintain all of the trees existing as of the effective date of this Covenant that have a diameter, measured four feet above the natural grade, that exceeds 15 inches and that are located in the area between the east property line abutting the 13th Street right-of-way and the eastern 50 feet of the Property. Removal of trees must receive prior approval of the City. The City will grant such permission if it can be demonstrated that the tree is unhealthy or threatens public safety. The City agrees to consider the advice of a qualified arborist or other landscaping professional.
- d. Community Use Space. The Owner of the Property agrees to provide at least 7,500 sq.ft. of floor area in the historic Washington School Building and/or the Library Annex which will be available for community uses for the general public. The Library Annex may be subtracted from the community use space if it is removed from the Property as part of a City discretionary land use review approval and the removal is also approved by the City Manager. Such community uses may include, but are not limited to the following: artistic events and programs which may include art, music, dance and theatre; temporary art gallery space; studio space; classes or workshops related to the arts, health, fitness and other hobby activities; and cultural events such as talks or presentations. Such uses are limited to those uses specifically permitted through the local zoning. The Owner of the Property agrees to apply for and diligently pursue all appropriate zoning approvals for the community use spaces to allow such land uses.
- e. View Shed, Park, No-Build Area. The Owner of the Property agrees that an area approximately 12,000 sq.ft. in size located at the southwest corner of the Property as shown on Exhibit B shall be limited as follows:

- i. No structure taller than an elevation defined as 18 inches above the top of the basement window header in the Washington School Building shall be constructed in this area.
 - ii. The area may only be used for access and parks purposes.
 - iii. No obstructions, other than railings, that may be required by the local building code, improvements related to accessibility and barrier free design, landscaping and associated benches, tables, planters and improvements associated with landscaping, shall be placed in this area that would obstruct views of the Washington School Building and the Library Annex except as may be approved by the City pursuant to an alteration certificate required for individual landmarks.
2. Agreement. Prior to submitting any building permit applications to the City to add any floor area, to demolish any building on the Property, or prior to or concurrent with an application for site review, the Owner shall submit an application for the grant of local individual landmark status (the "Individual Landmark Application") for at least that portion of the Property that is shown on Exhibit C. The boundary shown in Exhibit C for the individual landmark boundary is illustrative. Prior to submitting the Individual Landmark Application, the Owner will submit the final boundary for the individual landmark application for the final review and approval by the City Manager. The boundary shall include all of the following: An area at least three feet around the entire historic portion Washington School Building, the area of any portion of a building that is intended to connect to the historic portion of the Washington School, and the View Shed, Park, No-Build Area described in Paragraph 1.e. above. The Owner is not required, nor is prohibited, from including any other portion of the Property in the application including a building that may be constructed on the western portion of the Property or the Library Annex.
3. Term. This Covenant and the restrictions contained therein shall be in full force and effect for a period of twenty (20) years from the date of the recordation with the Boulder County Clerk and Recorder's Office.
4. Binding Effect. This Covenant shall run with the land and shall be binding upon any transferee, grantee, or any Owner of the Property or any portion thereof. Any transfer of title to the Property, or any portion thereof, by deed or other instrument of conveyance, shall be subject to this Covenant and by acceptance of a deed or instrument of conveyance, the transferee, grantee or any Owner of the Property, or any portion thereof, shall be deemed to have consented to this Covenant and the restrictions contained therein.
5. Restrictions are for the Benefit of the City. This Covenant and the restrictions contained therein shall be binding upon and inure to the benefit of the City and its respective successors and assigns, and any parties claiming under the City or its successors and assigns.

6. Enforcement. This Covenant may be enforced by the City, its successors or assigns, and enforcement may be made by any lawful means, including a suit for injunctive relief and damages to reimburse the City or its successors and assigns for enforcement costs, including reasonable attorney's fees. Venue for any suit to enforce compliance with this Covenant shall be proper in the District Court for the County of Boulder, State of Colorado. As part of any enforcement action on the part of the City, its successors or assigns, the Owner shall be responsible for the payment of all court costs and reasonable attorney's fees incurred by the City, its successors or assigns, in connection with any action to enforce this Covenant.
7. Approvals Required. This Covenant shall be effective upon the Owner obtaining the final approval of all requisite City approval authorities for site and use review under the City's land use code for the current or amended proposal that is consistent with the provisions of Sections 1 and 2 above. The Owner shall be required to apply for said approvals and pursue them in good faith until the applications have received a final decision by the final City approval authority. If the project has been denied by the City, at the option of the Owner, exercised by written notice delivered to the City, this Covenant shall be terminated and deemed of no further force and effect 90 days after said notice is received by the City. In the event that the provisions Sections 1 or 2 above are modified in the approval process, the City and Owner agree to take reasonable measures to amend this covenant to reflect such modifications.
8. Default. This Covenant shall expire and be of no further force and effect in the event that the Owner is required by default or otherwise through a contractual relationship with a lender that provides purchase financing or construction financing, to convey the Property to the lender. If the lender does not want to accept the obligations of this Covenant and the City approvals necessary to construct such project, the lender shall provide written notice delivered to the City.
9. Miscellaneous Provisions.
 - a. Severability. Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.
 - b. Governing Law. This Covenant and each and every related document are to be governed and construed in accordance with the laws of the State of Colorado. Nothing contained in this Covenant shall be construed as a waiver of the City's police powers.
 - c. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the School District and its grantees, transferees, successors and assigns.

Exhibit A

A portion of Lot 1 in Joseph Wolff's Subdivision of the North Half of the Northwest Quarter of Section 30, Township 1 North, Range 70 West of the 6th P.M., County of Boulder, State of Colorado; beginning at the Southwest corner of said Lot 1, thence Northerly along the West line of said Lot 1 a distance of 95 feet; thence Easterly and parallel to the North line of said Lot 1 to the East line of said Lot 1; thence Southerly along the East line of said Lot 1 a distance of 95 feet to the Southeast corner of said Lot 1; thence Westerly along the South line of said Lot 1 to the place of beginning.

Lots 2 and 3, Jos. Wolff's Subdivision, County of Boulder, State of Colorado, and

All that portion of Lot 4 of Joseph Wolff's Subdivision of the North Half of the Northwest Quarter of Section 30, Township 1 North, Range 70 West of the 6th P.M., County of Boulder, State of Colorado, described as follows, to-wit: beginning at the Southwest corner of said Lot 4, thence Northerly along the West line of said Lot 4 a distance of 95 feet; thence Easterly and parallel to the North line of said Lot 4 to the East line of said Lot 4; thence Southerly along the East line of said Lot 4 a distance of 95 feet to the Southeast corner of said Lot 4; thence Westerly along the South line of said Lot 4 to the place of beginning.

EXHIBIT B
BOUNDARY FOR THE
VIEW SHED, PARK, NO-BUILD AREA

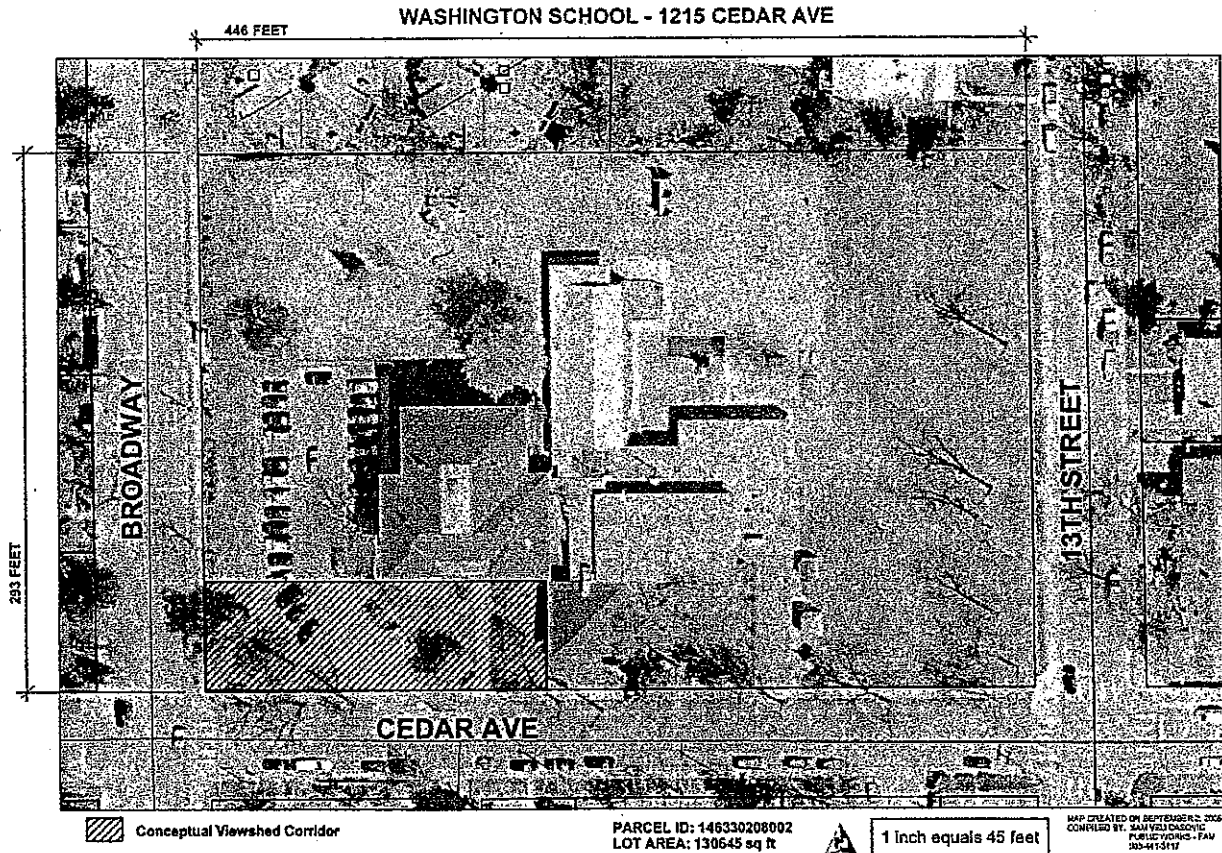


EXHIBIT C
ILLUSTRATIVE
MINIMUM BOUNDARY FOR THE
INDIVIDUAL LANDMARK APPLICATION

